IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

MFA.No. 883 of 2000

OPMV.1667/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT:

NEW INDIA ASSURANCE COMPANY LTD., REPRESENTED BY THE ASSISTANT MANAGER, REGIONAL OFFICE, KOCHI.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS:
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1. SUSEELA, W/O.JAMES, ALOOKKARAN HOUSE, CHIYYARAM POST, THRISSUR DISTRICT.

2. SUJA JAMES, D/O.JAMES, DO. DO.

3. SUNITHA, MINOR, D/O. JAMES, REPRESENTED BY GUARDIAN AND \ MOTHER SUSEELA THE FIRST RESPONDENT, ALOOKKARAN HOUSE, CHIYYARAM POST, THRISSUR.

4. V.K.SREEKUMAR, S/O.KRISHNAN NAIR, VATTAPPARAMBIL HOUSE, ALWAYE POST.

5. SAJEEVAN, S/O.RAMAN, PUTHANKATTIL HOUSE, KOOLIMUTTOM, MATHILAKAM.

6. UNITED INDIA INSURANCE COMPANY LTD., BRANCH, THRISSUR.

7. SAJU ANTONY, CHIRAYATH HOUSE, ENGANDIYOOR POST.

8. C.V.JOHNY, S/O.VARAPPAN, CHALAKKAL HOUSE, THRISSUR-4.

BY ADV. SRI.P.R.RAMACHANDRA MENON

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 5.11.2007, THE COURT ON 05/11/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 883 OF 20O0

Dated this the 5th day of November, 2007

JUDGMENT

Koshy, J.

This appeal is filed by the Insurance Company, who was the 6th respondent in O.P.(MV).No.1667 of 1996 on the file of the Motor Accidents Claims Tribunal, Thrissur. The above case was filed by the legal representatives of one James, who died in a motor accident. While he was travelling in the bus bearing registration No.KL-7/G-2032, another bus bearing registration No.KL-8/C-8100 came from behind and hit on the former bus. The bus which hit the former bus was insured by the appellant Insurance Company. Due to the accident, said James sustained injuries and ultimately he succumbed to the injuries in the hospital. It is contended that the accident occurred due to the negligence on the part of both drivers. Evidence was adduced in the case regarding the negligence and the Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the appellant Insurance Company. After considering the evidence, the Tribunal observed as follows:

"It has to be remembered that the accident had occurred while both the buses were going down a gradian. So, it was the duty of the drivers of both the vehicles to be at a relatively low speed while proceeding along such road. From the side of the 6th respondent they have produced Exhibit .B4, which is the A.M.V.I report pertaining to KL.7/G 2032 and Exhibit .B5 which is the A.M.V.I report pertaining to the bus bearing registration No.KL-8/C 8100. Exhibit B7, which is the copy of the police charge would show that the propeller shaft of the bus bearing No.KL-7/G 2032 was broken due to the hit of the other bus on its back side. Exhibit B5 A.M.V.I report pertaining to the bus bearing No.KL-8/C 8100 which was proceeding behind would indicate that there was no mechanical defect to that vehicle. Exhibit A7 copy of the police charge would show that the drivers of both the vehicles were charge-sheeted. But, the materials placed on record would indicate that the bus by which the deceased was travelling went out of control of the 2nd respondent only because of the breaking of the propeller shaft due to a hit by the other bus on the back side. Exhibit B4 A.M.V.I report pertaining to the bus bearing No.KL-7/G 2032 is clear enough to show that all the damage caused to the said vehicle were due to the accident in this case. Though the 6th respondent would contend that the accident had occurred while the 2nd respondent had suddenly stopped the vehicle, there is absolutely no evidence on record to substantiate the said contention. Both the vehicles were proceeding down a gradian sand the fact that the vehicle which was proceeding behind hit the back side of the vehicle which was going in front would indicate that the bus which was proceeding behind was being driven at an alarming speed. Had the 5th respondent been careful and at a relatively low speed, this accident could have been avoided."

On going through the records received, we agree with the findings of the Tribunal. The Tribunal correctly found that only because of the rash and negligent driving of the bus bearing registration KL-8/C-8100 by the 5th respondent driver which was insured by the appellant Insurance Company, the accident occurred. This is a finding of fact entered after a detailed consideration of the evidence. Hence, we see no reason to interfere in the appeal. The appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.883 OF 2000

JUDGMENT

5.11.2007